

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Unbundling of Local Exchange Carrier) RM - 8614
Common Line Facilities)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

OPPOSITION TO MOTION FOR EXTENSION OF TIME

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel, hereby opposes the Motion for Extension of Time filed with the Commission in the above-captioned matter on March 29, 1995, by the New York State Department of Public Service ("NYDPS"). NYDPS seeks an extension of sixty days, or until June 10, 1995, to file comments on MFS' Petition for Rulemaking.¹ MFS is compelled to oppose this Motion for the following reasons:

1. MFS filed its Petition for Rulemaking with the Commission on March 7, 1995 (not March 10 as stated in the Motion). Although not required to do so, MFS promptly sent a copy of the Petition by mail to the NYDPS. In addition, MFS has learned that a copy of the Petition was available on the Michigan Public Service Commission's electronic bulletin board system, which is widely used by state commission staff including the NYDPS, on either March 7 or 8.

2. On March 10, 1995, the Commission released a Public Notice (Report No. 2061) advising the public of the filing of the Petition for Rulemaking. Under 47 CFR §§ 1.4 and

¹ Comments are now due on April 10, 1995. Sixty days after that date is Friday, June 9, 1995. MFS assumes that the NYDPS meant to refer to the latter date, rather than Saturday, June 10.

1.405, comments on the Petition will be due 30 days after the release of the Public Notice (*i.e.*, on Monday, April 10, 1995, since the 30th day falls on a Sunday).

3. The NYDPS asserts that "[t]he proposed rulemaking raises complex public policy and legal considerations, which require significant research and analysis." (Motion, para. 2.) MFS does not disagree that important public policy issues are raised in this proceeding, but it also notes that the purpose of the initial round of comments is to assist the Commission in determining whether to proceed with a Notice of Proposed Rulemaking ("NPRM"). It is not necessary for the Commission to resolve all of the possible policy and legal issues at this early stage of the proceeding, but rather to make a tentative determination whether the issues raised and rules proposed by MFS warrant proceeding to the NPRM stage. If the Commission does issue a NPRM, the NYDPS and other interested parties will have further opportunities at that stage to address the issues in detail. Therefore, the "significant research and analysis" anticipated by the NYDPS may not actually be necessary at this stage.

4. The NYDPS also asserts that, "since Congress is currently examining many of the issues raised by the Petition, the actions of Congress could very well moot this Petition." (Motion, para. 3.) First, MFS must disagree with the unsupported assertion that legislation could moot the instant Petition. Based upon the bill recently reported by the Senate Commerce Committee, these issues will not disappear but, if anything, will become even more timely and relevant. In any event, these issues remain viable regardless of whether federal legislation actually emerges. Moreover, there is no way of predicting when Congress may act or what form legislation may take, and it would be impractical in the extreme for this Commission to suspend all policymaking activities whenever any proposed legislation is being considered by

Congress. Indeed, if the instant Petition had been filed a year earlier, the NYDPS could in good faith have made precisely the same assertion at that time. If the Commission had postponed addressing significant policy issues in 1994 due to the possibility of Congressional action, however, it would simply have wasted precious time, because in the end no legislative action took place. The Commission should not accept delay because of the mere possibility of future legislation.

5. Given the critical nature of these issues to MFS and local competition generally, the 60 day extension the NYDPS has requested is excessive and would be prejudicial not only to MFS and other similarly situated local exchange competitors, but also to the vast majority of telephone subscribers whose ability to make an effective choice among local service providers would be delayed. Although the NYDPS claims that no prejudice will occur because New York is considering its own loop unbundling rules (Motion, para. 4), this does not address the potential for prejudicial delays in all other jurisdictions as well as the current lack of any Federal policy regarding the application of the interstate common line rate elements to unbundled loops. An initial delay of 60 days in consideration of the Petition inevitably would force delays in subsequent stages of this proceeding as well. The Commission should proceed with a schedule that permits a timely decision on this matter in recognition of its potential significance to all telephone customers.

WHEREFORE, MFS respectfully requests that the Motion for Extension of Time be denied.

Respectfully submitted,

A handwritten signature in cursive script, reading "Russell M. Blau", is written over a horizontal line.

Andrew D. Lipman
Russell M. Blau
SWIDLER & BERLIN, Chartered
3000 K Street, N.W.
Washington, D.C. 20007
(202) 424-7500

Attorneys for MFS Communications Company,
Inc.

Dated: April 3, 1995

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April 1995, copies of MFS Communications Company, Inc.'s Opposition To Motion For Extension of Time were served by hand on the following:

Maureen Helmer *
General Counsel
Department of Public Service
State of New York
Three Empire State Plaza
Albany, New York 12223-1350

International Transcription
Service
1919 M Street, N.W.
Room 246
Washington, D.C.

Kathleen Wallman
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C.

James Schlichting
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, D.C.


Celia Petrowsky

* Via First Class Mail